

PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, Tuesday, December 28, 1999, 10:00 A.M., Massachusetts Department of Public Health, 250 Washington Street, Floor 2, Boston Massachusetts. Present were: Dr. Howard K. Koh (Chairman), Dr. Clifford Askinazi, Mr. Manthala George, Jr., Mr. Benjamin Rubin, Mr. Albert Sherman, Mr. Joseph Sneider. Ms. Shane Kearney Masaschi, Ms. Janet Slemenda, and Dr. Thomas Sterne were absent. Also in attendance was Ms. Susan Stein, Acting General Counsel.

Chairman Koh announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, Chapter 30A, Section 11A 1/2.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Joyce James, Director, Determination of Need Program and Attorney Carl Rosenfield, Deputy General Counsel, Office of the General Counsel.

RECORDS OF THE PUBLIC HEALTH COUNCIL MEETING OF AUGUST 17, 1999:

Records of the Public Health Council meeting of August 17, 1999 were presented to the Council. After consideration, upon motion made and duly seconded, it was voted (unanimously): That, records of the Public Health Council Meeting of August 17, 1999, copies of which had been sent to the Council Members for their prior consideration, be approved, in accordance with Massachusetts General Laws, Chapter 30A, Section 11A ½.

PERSONNEL ACTIONS:

In letters dated December 1, 1999, Katherine Domoto, M.D., Associate Executive Director for Medicine, Tewksbury Hospital, Tewksbury, recommended approval of the appointments and reappointments to the various medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sneider not present to vote]: That, in accordance with the recommendation of the Associate Executive Director for Medicine of Tewksbury Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointments and reappointments to the various medical staffs of Tewksbury Hospital be approved for a period of two years beginning December 1, 1999 to December 1, 2001:

<u>APPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
Richard Pillard, M.D.	Active/Psychiatry	27706
Dov Fogel, M.D.	Affiliate/Psychiatry	156539

<u>REAPPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
Mithlesh Garg, Ph.D.	Allied/Psychology	168
Wayne Pasanen, M.D.	Consultant/Internal Medicine	35507

In a letter dated December 15, 1999, Blake Molleur, Executive Director, Western Massachusetts Hospital, Westfield, recommended approval of the appointment and reappointments to the affiliate and consulting medical staffs of Western Massachusetts Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sneider not present to vote]: That, in accordance with the recommendation of the Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointment and reappointments to the affiliate and consulting medical staffs of Western Massachusetts Hospital be approved as follows:

<u>APPOINTMENT</u>	<u>SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
Kirankumar Chauhan, M.D.	General Medicine	53584

<u>REAPPOINTMENTS</u>	<u>SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
John O'Neil, M.D.	Otolaryngology	71750
Robert White, M.D.	Urology	35343

In a letter dated December 13, 1999, Robert D. Wakefield, Jr., Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of the appointment and reappointments to the allied health medical staff of Lemuel Shattuck Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sneider not present to vote]: That, in accordance with the recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointments and reappointments to the medical and allied medical staffs of Lemuel Shattuck Hospital be approved as follows:

<u>APPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
Bina Chaddha, M.D.	Consultant/Radiology	160646
Inna Goldberg, M.D.	Consultant/Radiology	80298

Anath Kamath, M.D.	Consultant/Orthopedics	152230
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**ALLIED HEALTH
PROFESSIONALS –
APPOINTMENTS**

SPECIALTY:

MEDICAL LICENSE NO.

Carol Bowen, CNS	Psychiatry	130826
Marjorie Goodwin, CNS	Psychiatry	114364
Linda Manjarrez, CNS	Psychiatry	153220
Betty Morgan, CNS	Psychiatry	148706
Victor Petrella, CNS	Psychiatry	162890
Gloria Shapiro, CNS	Psychiatry	100851

**ALLIED HEALTH
PROFESSIONALS –
REAPPOINTMENTS**

SPECIALTY

MEDICAL LICENSE NO.

David Gansler, Ph.D.	Clinical Neuro-Psychology	4912
Robert McMakin, Ed.D.	Clinical Neuro-Psychology	3317
Nancy Moczynski, Ph.D.	Clinical Neuro-Psychology	6590

In a memorandum dated December 7, 1999, Dr. Howard Koh, Commissioner, Department of Public Health, recommended approval of the appointment of Peter McGrath to Fiscal Officer V (Chief Financial Officer). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sneider not present to vote]: That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointment of Peter McGrath to Fiscal Officer V (Chief Financial Officer) be approved.

In a memorandum dated December 7, 1999, Dr. Howard Koh, Commissioner, Department of Public Health, recommended approval of the appointment of Charles Kaniecki to Program Manager V (District Health Officer). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously) [Council Member Sneider not present to vote]: That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointment of Charles Kaniecki to Program Manager V (District Health Officer) be approved.

FINAL REGULATION:

REQUEST FINAL PROMULGATION OF AMENDMENT TO DETERMINATION OF NEED REGULATIONS 105 CMR 100.000 GOVERNING MANDATORY TERMS AND CONDITIONS -- APPLICATIONS ELIGIBLE FOR DELEGATED REVIEW:

Ms. Joyce James, Director, Determination of Need Program, presented the amendment request to the Council. She noted, "This amendment allows radiation therapy applications for Determination of Need to be reviewed through the delegated review process. Of course, if adverse comments are filed or if the Commissioner decides not to approve a project, the application would be presented to the Public Health Council pursuant to 105 CMR 100.510. The companion piece to this amendment is the revision to the megavoltage radiation therapy guidelines. A public hearing was held on June 28, 1999. No one attended the hearing. Written comments were received from Donoghue, Barrett & Singal P.C. on behalf of St. Anne's Hospital, supporting the amendment. The comments indicate that the amendment ensures that radiation therapy services will be made available in a more timely manner." A brief discussion followed whereby it was noted that 12 services, including this one, can be processed via delegated review.

After consideration, upon motion made and duly seconded, it was voted (unanimously): That the **Request for Final Promulgation of Amendment to Determination of Need Regulations 105 CMR 100.000 Governing Mandatory Terms and Conditions -- Applications Eligible for Delegated Review** be approved; that a copy of the approved amendment be forwarded to the Secretary of the Commonwealth for promulgation; and that a copy be attached and made a part of this record as **Exhibit Number 14,666**.

DETERMINATION OF NEED PROGRAM:

MEMORANDUM: REQUEST FINAL ADOPTION OF REVISIONS TO THE DETERMINATION OF NEED GUIDELINES FOR MEGAVOLTAGE RADIATION THERAPY SERVICES:

Ms. Joyce James, Director, Determination of Need Program, presented the request for final adoption of Revisions to the Determination of Need Guidelines for Megavoltage Radiation Therapy to the Council. Ms. James stated that the revisions to the December 17, 1991 Megavoltage Radiation Therapy Determination of Need Guidelines (Exhibit A) allow existing megavoltage radiation therapy providers the option of adding units if they can demonstrate that their existing radiation therapy units are operating at capacity. Ms. James elaborated, "These changes were proposed to meet the demand for radiation therapy services in a timely manner. Currently, a number of existing megavoltage radiation therapy units are operating at or above capacity, resulting in treatment delays for patients. Under the existing guidelines, expansion would be impossible because need for additional radiation therapy capacity was

exhausted at the April 27, 1999 Public Health Council meeting, when Council approved the application filed by Morton Hospital and Medical Center, Good Samaritan Medical Center and Saint Anne's Hospital to establish radiation therapy services on the campus of Morton Hospital. These changes apply only to the health care requirements factor of the guidelines. The revised guidelines were released for public comment on May 26, 1999. Comments were received from Massachusetts Radiology Society, Saint Anne's, Brockton and Holyoke Hospitals" [see staff memorandum of December 28, 1999 for comments and staff response which is Exhibit No. 14,667].

After consideration, upon motion made and duly seconded, it was voted (unanimously)[Mr. Sherman not present to vote]: That the **Request for Final Adoption of Revisions to the Determination of Need Guidelines for Megavoltage Radiation Therapy Services** be approved and adopted; and that a copy be attached and made a part of this record as **Exhibit Number 14,667**.

COMPLIANCE MEMORANDUM:

PREVIOUSLY APPROVED DoN PROJECT NO. 4-1321 OF OLYMPUS HEALTHCARE CENTER, SOUTH BOSTON:

Ms. Joyce James, Director, Determination of Need Program, presented the request by Olympus Healthcare Center for an increase in the maximum capital expenditure from the inflation-adjusted \$3,202,229 (February 1998 dollars) to \$4,488,376 (February 1998 dollars). Ms. James said, "Olympus Healthcare Group is requesting an increase in the final capital cost of Determination of Need Project Number 4-1321 for substantial renovations to Olympus Healthcare Center, South Boston. Staff notes that the facility and the Determination of Need was acquired by Olympus. They were not initially involved in filing the application. Therefore, it was not until they started doing substantial renovations to the facility that they discovered the physical deterioration of the facility. They have submitted documentation, including canceled checks and invoices, to support those increases of costs. The trustees of East Sixth Street Trust submitted comments recommending denial of the cost increases. Staff finds that Olympus has satisfactorily responded to the assertions made by the trust concerning the asbestos removal, validity of the proposed cost increases, and the time and effort spent by Olympus in trying to address the concerns of the neighborhood group. After careful consideration of the comments, staff finds no basis to recommend denial of the project. Staff finds that the costs were reasonable, compared to other previously approved projects, they were unforeseen, and they were also beyond the control of the holder. Therefore, consistent with Counsel's past decisions, staff is recommending approval of the requested maximum capital expenditure with the approval of the condition noted on page four of the memorandum."

Mr. Robert Griffin, Attorney for Olympus Healthcare Center, accompanied by Mr. Paul Allison, Vice President of Olympus Healthcare Center, addressed the Council. He said, "We're here to support the staff recommendation. It's been a long arduous process to get this facility up and going. There were some unforeseen events, as described by staff, and we appreciate the staff recommendation, and the support they have given us."

After consideration upon motion made and duly seconded, it was voted (unanimously): to approve the requested significant change of **Project No. 4-1321 of Olympus Healthcare Center, South Boston to increase the final maximum capital expenditure from the inflation-adjusted \$3,202,229 (February 1998 dollars) to \$4,488,376 (February 1998 dollars)** as itemized below. A copy of the staff memorandum, dated December 28, 1999 is attached and made a part of this record as **Exhibit Number 14,668**.

The approved MCE of \$4,488,376 includes 31,995 GSF (28,695 GSF for renovations and 3,300 GSF for new construction):

Land costs:	\$	
other Non-Depreciable Land Development		<u>661</u>
Total Land Costs:		661

Construction Costs:		
Construction Contract (including bonding cost)	2,601,972	
Fixed Equipment not in Contract		
Architectural & Engineering Costs		
Pre- & Post-Filing Planning & Development	99,994	
Net Interest Expense During Construction	475,940	
Major Movable Equipment	340,759	
Other: Asbestos Removal	159,769	
Internal Demolition	625,497	
Computer and Software	25,657	
Emergency Generator	<u>70,661</u>	
Total Construction Costs		4,400,249

Financing Costs:		
Costs of Securing Financing	87,466	
Total Financing Costs	87,466	
Total Estimated MCE		\$4,488,376

The condition accompanying this approval is as follows:

All conditions attached to the original and amended approval of this project shall remain in effect.

COMPLIANCE MEMORANDUM:

PREVIOUSLY APPROVED DoN PROJECT NO. 2-1329 OF WOODFORD OF AYER NURSING HOME – REQUEST FOR TRANSFER OF SITE FROM 15 WINTHROP AVENUE, AYER, MA TO 100 SOUTH STREET, SOUTHBRIDGE, MA:

Ms. Joyce James, Director, Determination of Need Program, presented the request by Woodford of Ayer Nursing Home for a transfer of site. Ms. James stated, "...The DoN regulations require that three criteria be met before a transfer of site can be approved. They are (1) the population served cannot be substantially changed or in the case of a nursing facility – not change the service area, (2) not change the service as approved, and (3) that it does not result in relocation of more than twenty-five miles from the original site, unless the Department determines that such a relocation would lead to a redistribution of beds. It is apparent that the project meets the first two criteria. Ayer and Southbridge are in the same health service area, HSA 2, and the applicant is proposing to transfer the 71-bed facility. As for the last criteria, the distance between sites, Ayer is more than 25 miles from Southbridge. Therefore it is staff's responsibility to ensure this transfer will not result in a maldistribution of beds in either area. Staff finds that it will not, based on the following evidence: Projected need calculations for the subareas in which Ayer and Southbridge are located show need for 15 beds in the Ayer subarea and need for 74 beds in the Southbridge subarea. Further evidence is that within a 13 mile radius of Ayer and Southbridge, respectively, there are 1,640 and 554 available beds. Lastly, the project is located on the campus of Harrington Memorial Hospital, therefore, there is concern that the transfer might affect utilization of Providence House Nursing Home, which receives some of its referrals from Harrington Memorial. In 1998, discharges from Harrington Memorial Hospital showed that 36% of those discharges were referred to Providence House Nursing Home, with the remaining discharges being referred outside Southbridge, because there are no beds. This again affirms that the transfer of beds to Southbridge could indeed provide an equal distribution of beds in both areas."

Ms. James said further, "The holder reported that it has two projects coming on-line: one in Sterling and one at Lowell General Hospital, Lowell. The applicant has therefore guaranteed that these two facilities will be geographically accessible to residents currently served by Woodford of Ayer. The holder, Commonwealth Communities, has agreed to guarantee beds in those two facilities for residents of Ayer and surrounding communities. Staff has recommended this as a condition of approval. Based on these findings staff recommends approval of the transfer of site."

After consideration upon motion made and duly seconded, it was voted: (Chairman Koh, Dr. Askinazi, Mr. George, Jr., Mr. Rubin, and Mr. Sneider in favor; Mr. Sherman abstaining per 268A): to approve the request by **Previously Approved DoN Project No. 2-1329 of Woodford of Ayer Nursing Home**, for transfer of site from 15 Winthrop Avenue, Ayer, MA to 100 South Street, Southbridge, MA.

The meeting adjourned at 10:30 am.

Howard K. Koh, M.D., M.P.H.
Chairman

LMH